

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: Andrés F. Zuluaga *et al.* Confirmation No: 2256

Application No: 10/765,626 Group: 3737

Filed: January 27, 2004 Examiner: Shahrestani,
Nasir

For: Side Firing Fiber Optic Array
Probe

Customer No.: 29127

Attorney Docket No.	0010.0009US1
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RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the pending Restriction Requirement, mailed February 4, 2009 (Paper No. 20090202), please note the following election.

The species of claims 19-21 and 45-47, describing the capillary tubes being spaced apart from one another, is elected for examination.

Claims 1-13, 15-39, and 41-53 encompass the elected species.

Since none of the claims requires the tubes not being spaced, all pending claims are deemed to compass the elected species. The reasoning for this conclusion is set forth below:

The taxonomy of the restriction requirement was articulated as follows:

This application contains claims directed to the following patentably distinct species being claims 17-18 and 43-44 which describe that the capillary tubes are attached and bonded together, as opposed to claims 19-21 and 45-47 which describe the capillary tubes being spaced apart from one another. The species are independent or distinct because claims to the different

The restriction requirement is interpreted as seeking to distinguish between the embodiments disclosed in Fig. 7A as opposed to Fig. 7B and 7C. In Fig 7A, the capillary tubes are directly bonded to each other. In Fig. 7B, the capillary tubes 128A, 128B are bonded and attached to each other via an intervening spacer 152, see claim 19 for example. In Fig. 7C, the tubes 128A, 128B are directly bonded to each other with one tubes having an integral spacer block 154, see claims 20 and 21.

In Fig. 7D, a single tube is used, which has multiple bores, see claim 15.

It appears that the problem with the restriction requirement is that claims 19-21, which encompass the embodiments of Figs. 7B and 7C, still show capillary tubes that are attached and bonded together, i.e., indirectly attached and bonded together via a separate spacer (Fig. 7B) or directly attached via an integral spacer (Fig. 7C). Thus, the taxonomy articulated in the Office Action does not distinguish the embodiments.

Considering the claims listed in the restriction requirement against figures, it appears that the restriction requirement is seeking to distinguish between the embodiments in which the tubes are directly bonded to each other without an intervening spacer, see Fig. 7A, and the embodiments in which the tubes are bonded or attached to each other via an intervening separate or integral spacer, see Figs 7B and 7C.

Note that Fig. 7D falls outside this taxonomy.

Claim 15 corresponds to Fig. 7D and falls within neither of the species. It is therefore outside the requirement and thus, deemed not withdrawn.

Claim 17 and 43 are deemed to be consistent with the elected species. Consider the embodiment of Fig. 7B: here tubes 128A and 128B are clearly attached, albeit

indirectly, to each other. On the other hand, the claims do not negate the possibility of the tubes being spaced apart from each other. Thus these claims encompass the elected species.

Claims 18 and 44 are also deemed to be consistent with the elected species. Consider the embodiment of Fig. 7B: here tubes 128A and 128B are bonded, albeit indirectly, to each other. On the other hand, the claims do not negate the possibility of the tubes being spaced apart from each other. Thus these claims encompass the elected species.

The present application is ready for examination on the merits. Should any questions arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

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